

DX-401

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 O loughlin, Johanna (Vol. 01) - 04/26/2010

1 CLIP (RUNNING 00:26:13.762)

 DIRECT EXAMINATION ...

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31 SEGMENTS (RUNNING 00:26:13.762)



1. PAGE 4:22 TO 5:04 (RUNNING 00:00:17.333)

22 DIRECT EXAMINATION
 23 BY MS. HUGHEY:
 24 Q. Good morning, Ms. O'Loughlin. Could you state
 25 your full name for the record.
 00005:01 A. Johanna G. O'Loughlin.
 02 Q. You are the former vice-president and general
 03 counsel of Fisher Scientific; is that correct?
 04 A. That is correct.

2. PAGE 5:15 TO 5:19 (RUNNING 00:00:18.500)

15 Q. How long were you at Fisher?
 16 A. About 16 years.
 17 Q. What years were you there?
 18 A. I started in 1980 and I left in about March or
 19 April of 1996.

3. PAGE 6:23 TO 7:05 (RUNNING 00:00:23.222)

23 Q. Now, when you worked at Fisher Scientific in
 24 early 1990s, were you responsible for certain
 25 legal filings?
 00007:01 A. Occasionally.
 02 Q. Did you have responsibility for things like
 03 trademark applications?
 04 A. Generally under my oversight that would be the
 05 case.

4. PAGE 7:18 TO 8:04 (RUNNING 00:00:46.565)

18 Q. Can you please turn to what has been marked as
 19 Lawson Exhibit 40, L0260585 to L0260624. It
 20 appears to be entitled "Service Mark,
 21 Principal Register, Fisher RIMS."
 22 A. I have that.
 23 Q. What is this document?
 24 A. It says that it is just as you described it, a
 25 service mark, principal register. I really
 00008:01 don't know beyond that how to describe it.
 02 Q. What is this document dated?
 03 A. It says registered May 31, 1994 on the title
 04 line.

5. PAGE 8:23 TO 9:12 (RUNNING 00:00:40.800)

23 Q. Can you please turn to page L0260591?
 24 A. Yes.
 25 Q. Do you see at the bottom of the page the
 00009:01 signature block for Fisher Scientific Company?
 02 A. Yes.
 03 Q. Do you see it says, "Johanna G. O'Loughlin,
 04 Vice-president, general counsel"?
 05 A. I do.
 06 Q. That is you, correct?
 07 A. That is.
 08 Q. Is that your signature in the signature block?
 09 A. It is.

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10 Q. Could you please turn to the next page, page
11 L0260592?
12 A. I have it.

6. PAGE 9:19 TO 9:25 (RUNNING 00:00:13.166)

19 Q. And you signed this on behalf of Fisher
20 Scientific?
21 A. I did.
22 Q. Were you working for Fisher Scientific that
23 day that is dated below that, the 26th day of
24 April 1993?
25 A. I was.

7. PAGE 11:07 TO 11:18 (RUNNING 00:00:30.667)

07 Q. Could you please turn to the next page
08 L0260593?
09 A. I have it.
10 Q. Do you see the bottom of the page where it
11 says, "Services" and then to the right there
12 is a paragraph?
13 A. I do.
14 Q. Underneath that it says Fisher RIMS?
15 A. It does.
16 Q. And then above that you see "Use in Commerce,
17 August 1992"?
18 A. Yes.

8. PAGE 12:03 TO 12:15 (RUNNING 00:00:33.933)

03 Q. Now you see next to it services it says,
04 "Computer-based services for processing
05 requisitions, entering purchase orders,
06 maintaining inventory records, transferring
07 related reports and data to other computers
08 and generating documents for picking, packing,
09 shipping and receiving requisitioned and
10 ordered products." Do you see that paragraph?
11 A. I do.
12 Q. Was it your understanding that those are the
13 services that were being used by Fisher RIMS
14 in August of 1992?
15 A. It is.

9. PAGE 13:08 TO 14:07 (RUNNING 00:01:07.867)

08 Q. Could you turn to L0260594, the next page.
09 A. Okay.
10 Q. Again, do you see on this page where it says,
11 "Used in Commerce, August 1992"?
12 A. I see that.
13 Q. And below it has services and it has a similar
14 paragraphs talking about those services?
15 A. Right.
16 Q. Is it your understanding that this Fisher RIMS
17 mark was being used in Commerce in 1992?
18 A. It is.
19 Q. Could you please turn to the next page,
20 L0260595?
21 A. I have that.
22 Q. What is this document?
23 A. It appears to be the cover of a commercial
24 brochure entitled Fisher RIMS.
25 Q. And you see at the bottom where it says, "A
00014:01 revolutionary electronic Requisition and
02 Inventory Management System"?
03 A. Yes.
04 Q. Was it your understanding that the Fisher RIMS

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05 was a requisition and inventory management
 06 system?
 07 A. It was.

10. PAGE 14:12 TO 15:10 (RUNNING 00:00:57.933)

12 Q. You see that this page has what looks to be a
 13 series of bullet points describing Fisher
 14 RIMS?
 15 A. I see that.
 16 Q. Do you see the bullet point one says,
 17 "Consolidates all supplier activity, including
 18 third-party and administrative purchases"?
 19 A. I see that.
 20 Q. Do you see bullet point four that says,
 21 "Allows flexible remote requisitioning by
 22 formatted screen, telephone, fax or bar code
 23 scanning"?
 24 A. I see that.
 00015:01 Q. Do you see bullet point it looks like maybe
 02 bullet point eight. It says,
 03 "Cross-references your stock numbers and all
 04 your supplier numbers."
 05 A. Yes.
 06 Q. And then bullet point 15, do you see that? It
 07 says "Utilizes file transfers and EDI"?
 08 A. I see that.
 09 Q. And bullet point 17 says, "Utilizes OS/2
 10 operating system, relational database."
 10 A. Right.

11. PAGE 15:15 TO 15:17 (RUNNING 00:00:08.400)

15 Q. Is it your understanding that the Fisher RIMS
 16 system had these features?
 17 A. In general, yes.

12. PAGE 15:18 TO 16:02 (RUNNING 00:00:37.800)

18 Q. To the best of your knowledge this document
 19 starting at page L0260595 to L0260608 -- to
 20 the best of your knowledge was this document
 21 used in Commerce at the time this application
 22 was filed?
 23 A. It is the same answer I gave before. To the
 24 best of my knowledge that would be the case.
 25 The facts are accurately recorded. If this
 00016:01 was attached to it, that was the document that
 02 was in Commerce -- used in Commerce.

13. PAGE 16:10 TO 16:12 (RUNNING 00:00:06.738)

10 Q. When you were working at Fisher, did you ever
 11 work with Fisher on its 10-Ks?
 12 A. I don't really recall doing that.

14. PAGE 16:15 TO 16:24 (RUNNING 00:00:40.933)

15 Q. Can you tell me what a 10-K is?
 16 A. The 10-K is the annual report that public
 17 companies are required to file with the
 18 Securities and Exchange Commission?
 19 Q. Can you please turn to what has been marked as
 20 Lawson Exhibit No. 42, L0343548 to L0343586.
 21 A. I have that.
 22 Q. What is this document?
 23 A. This is a form 10-K for Fisher Scientific
 24 International for, I guess, for 1993.

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28. PAGE 35:15 TO 35:24 (RUNNING 00:00:28.663)

15 Q. Were you aware that there were three patents
 16 granted by the patent office for the
 17 electronic sourcing system?
 18 A. I was not.
 19 Q. Would the company expend resources seeking to
 20 obtain intellectual property protection for
 21 inventions that it thought was worthless? Is
 22 that part of the policy of the company?
 23 A. Well, I can't speak for others but it doesn't
 24 make much sense to me.

29. PAGE 36:09 TO 41:15 (RUNNING 00:06:16.683)

09 Q. Understood, but as general counsel at the time
 10 from the -- just focussing on the 1992 to 1996
 11 period you weren't authorizing Mr. Dornburg to
 12 file applications for patents at the patent
 13 office that the company thought had no value,
 14 correct?
 15 A. I wasn't, but I don't know if I was involved
 16 in the patent applications or not since you
 17 haven't shown me anything with my signature on
 18 it.
 19 Q. I am not asking you about what you had your
 20 signature on. As general counsel, was it the
 21 policy of the company to file applications to
 22 the patent office that the company thought had
 23 no value? Yes or no?
 24 A. I would not have executed such a policy, no.
 25 Q. I didn't think you would. All right. Let me
 00037:01 ask you about some of these exhibits if you
 02 have them in front of you. Let's start out
 03 with -- first you were asked some questions
 04 about Exhibit No. 40, which is this trademark
 05 application that bears your signature in
 06 various places. Do you recall that?
 07 A. I do.
 08 Q. Do you have it in front of you?
 09 A. I do.
 10 Q. Let's just skip over some of the stuff and go
 11 right to the brochure. You called it a
 12 marketing brochure. Do you recall that? That
 13 starts at page 595 at the bottom right.
 14 A. Okay.
 15 Q. It is a marketing brochure, correct?
 16 A. That is what it looks like.
 17 Q. Is it not a technical document, right, like a
 18 manual that would help you understand the
 19 functioning of the Fisher RIMS system,
 20 correct?
 21 A. I assume not. It looks like a commercial
 22 brochure to me.
 23 Q. For consumption of potential --
 24 A. Customers.
 25 Q. -- customers of the RIMS system, correct?
 00038:01 A. That is my understanding.
 02 Q. You were asked some questions about some
 03 bullet points that appear at page -- it ends
 04 with 598. Do you recall that?
 05 A. I do.
 06 Q. You have no independent knowledge as to
 07 whether or not the RIMS system in this period
 08 of time say in 1992 or so had that
 09 functionality, correct?
 10 A. I actually think that it had this genre of

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11 functionality. That is what it was designed
 12 to do. It was designed to take over. I know
 13 what you are asking me but my understanding
 14 was that the RIMS system was designed to take
 15 over the inventory storeroom of large
 16 customers and to manage it from the beginning
 17 to the end, from purchase to the lab bench for
 18 the customer and that it needed features like
 19 these to be effective. I have no specific
 20 knowledge of each one of these things in
 21 detail, no.

22 Q. Fine. Thank you. You just confirmed for me
 23 on page 598 the documentation that we are
 24 looking at with these bullet points Ms. Hughey
 25 asked you about, there is no mention at all
 00039:01 about catalogs, correct?

02 A. There may not have --
 03 Q. Does the word catalog appear there?
 04 A. Does the word catalog appear, no, but that is
 05 what they would be accessing would be the
 06 catalog system.
 07 Q. The Fisher Catalog?
 08 A. I think it was intended to be able to manage
 09 other items otherwise it wouldn't have been
 10 able to replace --
 11 Q. Does it have any discussion of the word
 12 catalog anywhere on this page, yes or no? Can
 13 you answer that fairly?
 14 A. I would have to look. It says, "Consolidates
 15 all supplier activity including third-party
 16 and administrative purchases." It doesn't
 17 have the word catalog, but that is my
 18 understanding.
 19 Q. Fair enough. How many iterations did the
 20 Fisher RIMS system go through?
 21 A. I don't know.
 22 Q. The inventors say it went through many
 23 iterations. Do you know any of the trade
 24 names that the iterations went through?
 25 A. I don't know.

00040:01 Q. Do you know how the features and functionality
 02 changed during the period of time from 1992 to
 03 1995, for example?
 04 A. I do not.
 05 Q. Let's focus on Exhibit No. 43 for a moment if
 06 we could. That was the annual report that you
 07 said you had no responsibility for?
 08 A. Right. I have it.
 09 Q. The page that ends with the page No. 589?
 10 A. Okay. I have it.
 11 Q. You were asked about this entry italicized
 12 "Computer order-entry system," do you see
 13 that?
 14 A. I do.
 15 Q. Can you tell me where in this paragraph it
 16 discusses the capabilities searching multiple
 17 vendor catalogs?
 18 A. I don't see it there.
 19 Q. Fair enough. Next paragraph, the Fisher
 20 Catalog. Is there any other catalog other
 21 than the Fisher Catalog mentioned in that
 22 paragraph?
 23 A. The paragraph is entitled "The Fisher
 24 Catalog," so, no.
 25 Q. Fair enough. Is it Exhibit No. 42 was also an
 00041:01 annual report. I took these out of order.